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16 UNITED STATES DISTRICT COURT

17 DISTRICT OF NEVADA

18 MELINDA ELLIS, individually and on
19 behalf of all others similarly situated,

Case No.: 3:09-cv-00428-LRH-RAM

20 Plaintiff,

21 v.

22 **MOTION TO WITHDRAW
AND
MOTION TO STAY
PROCEEDINGS**

23 ALESSI TRUSTEE CORPORATION;
24 DAVID ANTHONY ALESSI; and
25 ALESSI & KOENIG, LLC.; and
26 DOES I through XX,

Trial Date: Not Set

27 Defendants.
28

COMES NOW, Curtis B. Coulter and Matthew L. Sharp, counsel for the Plaintiff,
Melinda Ellis, hereby motion the Court to withdraw.

I. MOTION TO WITHDRAW

Plaintiff's counsel has moved to withdraw as counsel on the basis of an ethical
conflict pursuant to Nevada Rules of Professional Conduct 7.1, set forth in the affidavits
under seal. Given the conflict, the withdrawal is appropriate. At this time, a trial has not

1 been set. Discovery is open until April 30, 2012. The Plaintiff, Melinda Ellis has been
 2 notified of the attorney's intention to withdraw and she has been advised to seek
 3 substitute counsel. The Plaintiff therefore, has reasonable notice of the intent to
 4 withdraw. The Plaintiff also has reasonable time to employ other counsel. Counsel for
 5 the Plaintiff has agreed to surrender all papers and property to which the client may be
 6 entitled. The Plaintiff has not paid any fee or expenses associated with this case. In
 7 addition, the undersigned files under seal the Affidavit of Curtis B. Coulter, and Matthew
 8 L. Sharp, in further support of this Motion to Withdraw.

9 II. MOTION TO STAY

10 Courts have the power to stay on going proceedings "incidental to the power
 11 inherent in every court to control the disposition of the causes on its docket with
 12 economy of time and effort for itself, for counsel, and for litigants." *Landis v. North*
 13 *American Co.*, 299 U.S. 248, 255 (1936). When there is independent proceeding related
 14 to a matter before the court, the court may "find it efficient for its own docket and the
 15 fairest course for the parties to enter a stay of an action before it, pending resolution of
 16 independent proceeding which may bear upon the case." *Mediterranean Enterprises,*
 17 *Inc., v. SSangyong Corp.*, 708 F.2d. 1458, 1465 (9th Cir. 1983).

18 In determining whether a stay is appropriate, the court must weigh various
 19 competing interest, including the possible damage which may result from granting the
 20 stay, the hardship to the parties of the suit is allowed to proceed, and the orderly course
 21 of justice measured in terms of the simplifying or complicating of issues, proof, and
 22 questions of law which it could be expected to result from a stay. *Lockyer v. Myrant*
 23 *Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005).

24 Based on the pleadings and papers in this Motion, good cause appears to both
 25

1 grant the Motion to Withdraw and grant the Motion to Stay, allowing Melinda Ellis time
2 to obtain additional counsel. It is respectfully requested that Mrs. Ellis be allowed sixty
3 (60) days to obtain substitute counsel.

4 **III. CONCLUSION**

5 Counsel for the putative Class Representative respectfully requests this Court grant
6 the Motion to Withdraw and Motion to Stay Proceedings.

7 RESPECTFULLY SUBMITTED.

8
9 Dated: 1-30-12

10
11 

12 CURTIS B. COULTER, ESQ.
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17 Dated: 1-30-12

18 

19 MATTHEW L. SHARP, ESQ.
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24 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on 30th day of January 2012, I electronically filed the foregoing Motion to Withdraw and Motion to Stay with the Clerk of the Court for the United States District Court, District of Nevada, by using the CM/ECF system which will send email notification to the following counsel of record:

Thomas J. Bayard (tjb@allessibayard.com)

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Michael R. Fostakowsky (mrf@allessibayard.com)

/s/ Irene Sanchez
Employee of Curtis B. Coulter, Esq.